IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 02/12/2004

Coram

THE HON'BLE MR.JUSTICE N. DHINAKAR
AND
THE HON'BLE MR.JUSTICE N.KANNADASAN

W.A.NO.3857 of 2004
and
W.A.M.P.No.7283 of 2004

1. The State Government of Tamil Nadu,
Rep. by Secretary to Government,
Health and Family Welfare Department,
Fort St. George, Chennai-600 009.

2.The Director of Medical Education,
Kilpauk, Chennai-10. ... Appellants

-Vs-

Padanilam Welfare Trust,
Rep. by its Chairman,
C.K.Velayuthan Nair,
Kulasekharam,
Kanyakumari District-629 161. Respondent

Writ Appeal filed against the order passed in writ petition No.20458 of 2004 dated 11.9.2004 .

!For Appellants : Mr. V. Raghupathy
Government Pleader.

^For Respondent : Mr. G. Masilamani
Senior Counsel for
M/s.B.Saraswathi.

:Judgment

N. KANNADASAN, J.

The above appeal is filed as against the order in W.P.No.20458 of 2004 dated 11.9.2004, quashing the order dated 17.6.2004 of

the first respondent/first appellant herein and consequently directing the respondents/appellants herein to issue essentiality certificate.

2. The petitioner in the writ petition, a public Charitable Trust, has applied on 3.10.2001 for the grant of essentiality certificate for running a Medical College at Kulasekharam, Kanyakumari District with an annual intake of 100 students. According to the petitioner, one of its object is to promote education, which is already running College of Nursing, College of Physiotherapy and an institute of Dental Sciences. According to the petitioner, they are running 350 bedded hospital from February 1986 and they have spent huge amount for establishing the college. Under the said circumstances, an application dated 3 .10.2001 was submitted by the petitioner seeking grant of essentiality certificate for the establishment of a Medical College.

3. In pursuance of the said application, an inspection was conducted on 10.10.2002 by the Committee constituted for the said purpose. Even though the inspection was conducted, no order was passed resulting in the petitioner filing a writ petition in W.P.No.12283 of 2003 wherein an order was passed on 28.4.2003, directing the respondents to pass orders within a period of four weeks. As no order was passed nearly for a period six months, contempt application No.1073 of 2003 was filed wherein notice was ordered. Once again an inspection was conducted for a second time on 12.1.2004 and the Government has passed order in G.O.Ms.No.84 Health and Family Welfare (MCA2) Department dated 3.2.2004 rejecting the applications submitted by the petitioner. Aggrieved against the said order of rejection, the petitioner has filed writ petition in W.P.No.7587 of 2004. During the pendency of the said writ petition, an interim direction was passed on 6.4.2004, directing the respondents to conduct another inspection. Accordingly, on 22.4 .2004 a third inspection was conducted and a report was submitted on 30.4.2004 to the effect that there were no deficiencies. Subsequently, another interim direction was passed on 30.4.2004 in the above writ petition, directing the respondents to consider the inspection report dated 30.4.2004 and pass orders. In the light of the said interim direction, by G.O.Ms.No.554 Health and Family Welfare (MCA2) Department dated 17.6.2004, the petitioner's case was again rejected. Aggrieved against the said order of rejection, the petitioner has filed W.P. No.20458 of 2004 which was allowed on 11.9.2004, against which the present appeal is filed.

5. According to the learned Government Pleader, the order passed by the learned Judge is not in accordance with law, as held by the Honourable Supreme Court in its decision in Government of Andhra Pradesh and Anr. vs. Medwin Educational Society (JT 2003 (8) SC 567). According to the learned Government Pleader, the State has got an important role while considering the issuance of grant of essentiality certificate and the State has to take a decision considering the local needs prevailing in the State in the matter of grant of essentiality certificate. According to the learned Government Pleader, the order of the State Government in rejecting the application for the grant of essentiality certificate is passed considering the various circumstances existing in the State and as such the said order is perfectly valid in law.

6. Heard Mr.G.Masilamani, learned Senior Counsel appearing for the respondent/petitioner on all the above points.

7. On a perusal of the entire materials placed before us, there is no dispute as regards the factual aspect as adverted to in the earlier paragraphs viz., the application submitted by the petitioner as well as the orders passed by this Court in earlier proceedings and the inspections carried out initially twice and the earlier order of rejection dated 3.2.2004 and a further inspection on a third occasion and the subsequent order of rejection dated 17.6.2004 which is the subject matter of the writ petition. In the order dated 17.6.2004, while rejecting the application submitted by the writ petitioner, the following reasons are given as set out hereunder:-

"(i) The staff pattern is not as per Medical Council of India norms with regard to teaching experience;

(ii) The Trust has not yet obtained exemption under Section 37-B of the Tamil Nadu land Reforms Act, 1961, as reported in the Inspection Report;

(iii) The Government have already ordered starting of a Medical College at Kanyakumari District and it is not desirable and feasible to start another Medical College in Kanyakumari District, in public interest; and

(iv) The Government have already decided to start a Medical College at Vellore and decided to increase the existing intake of students by 350 in five Government Medical Colleges."

8. As regards the first ground viz., the staff pattern, it cannot be suggested that the State has any role to decide the said issue. The said issue is exclusively within the ambit of the Medical Council of India and the State Government was not required to decide as to whether the staff employed, the facilities provided etc., are in conformity with the regulations of the Central Government as well as the norms prescribed by the Medical Council of India. The learned Judge has rightly held that the said reasoning is not sustainable in the light of the earlier decision rendered by this Court on the very same point. We are of the opinion that the first reasoning of the State Government with regard to the staff pattern is not sustainable in law.

9. As regards the second reasoning to reject the application viz., the petitioner failed to obtain exemption under 37-B of the Tamil Nadu Land Reforms Act, 1961 is concerned, it is pertinent to note that the Government has not passed any orders on such applications filed by the petitioner as well as institutes similarly placed like them seeking exemption. It is also not disputed that the issue is still pending consideration wherever applications were submitted for the grant of exemption and this Court has granted directions in similar matters not to insist on such certificate of exemption subject to the condition that the institute shall abide by all the requirements and directions to be issued when orders are passed with regard to other applications for the grant of exemption or to suffer consequences thereof. Under the said circumstances, we are of the opinion that the State Government cannot reject the applications for the grant of essentiality certificate on the ground of non-production of the order of exemption considering the fact that such applications seeking an order of exemption are

yet to be disposed of by the Government.

10. As regards the third and fourth reasonings are concerned, both the reasonings are more or less similar in nature and they can be dealt with as set out hereunder. The above reasonings suggest that it is not desirable and feasible to start another Medical College in Kanyakumari District in public interest and the Government itself has already decided to start another Medical College at Vellore and it has decided to increase the existing intake of students by 350 in five Government Medical Colleges. While considering the above reasons, it would be useful to refer the order of the Government Order in G.O.Ms.No.2 11 Health and Family Welfare (MCA2) Department dated 13.8.2001. The said order reveals that the Government had examined the recommendations of the Committee to suggest the norms for the issuance of the essentiality certificate in terms of the nineth plan target which suggests that doctor-patient ratio should be fixed at 1:1000 instead of the existing ratio as 1:2000. Inasmuch as the Government itself has taken a decision to consider the issuance of essentiality certificate, the doctor-patient ratio has to be looked into, it is not known as to why the Government has rejected the application of the petitioner for the above mentioned reasons. The Government has not come forward with the plea that in the light of the increase in the intake as well as by granting a permission to start another Medical College, it has reached the targetted doctor-patient ratio of 1:1000. In the very same Government Order, it is also indicated that the prohibition to start an another Medical College within the distance of 100 kms from the existing college, is not applicable in respect of the proposed colleges in a backward rural area. It is not disputed that the proposed location of the petitioner's college lies within the backward area, inasmuch as the plea raised by the petitioner in this regard was not disputed by the Government.

11. As regards the desirability and feasibility to start another Medical College at Kanyakumari District is concerned, it appears that a decision was taken to start another Medical College at Kanyakumari District by the Government subsequent to the year 2003, whereas the petitioner's application for essentiality certificate was submitted in the year 2001 itself. Inasmuch as the petitioner has established a 35 0 bedded hospital from February 1986 onwards by spending huge amounts and it has chosen to submit an application in the year 2001 itself the above reasoning for rejecting the application for the issuance of essentiality certificate was putforth for the first time on 17.6.2004 , which is not tenable in law. In this connection, it is useful to take note of the decision of the Supreme Court in AL KARIM EDUCATIONAL TRUST vs. STATE OF BIHAR (1996 (8) SCC 330), wherein the attitude of the competent authorities in rejecting the applications on new and fresh grounds, which were not found in the earlier reports has been deprecated. As rightly held by the learned Judge, inasmuch as the petitioner-institute having spent several lakhs/crores of rupees with a hope to establish a Medical College, has chosen to rectify all such infrastructural defects which were pointed out earlier, the action of the Government in rejecting the application is a clear violation of principles of legitimate expectations.

12. In the backdrop of the above factual aspects, the

appellant/ State cannot contend that it has rightly rejected the application of the petitioner for the grant of essentiality certificate on the ground that the State has an important role as observed by the Apex Court in its decision in MEDWIN's case. In the very same decision, the Apex Court has observed as follows:-

"56. Although the State has a say in the matter as regard location for establishing a Medical College or dental college, it has to exercise such power in a reasonable manner. The factors which are relevant for determination of such issues would be local needs and public interest. The question as to whether the Medical College is being set up by a minority institution or a non-minority institution must be considered in the light of the observations made in T.M.A.Pai (supra) and Islamic Academy of Education (supra). While rejecting such an application for grant of essentiality certificate, the State must comply with the principles of natural justice which would include assigning of sufficient and cogent reasons.
57. In short, the State cannot act arbitrarily or capriciously. Its decision must be informed by reasons and based on relevant factors."

In the light of the above observation, we are of the opinion that the State has not exercised the power in a reasonable manner based on relevant factors. In view of the fact that the petitioner was forced to approach this Court again and again, and in spite of the orders passed by this Court on various occasions, the State has rejected the application of the petitioner finding out one reason or other in support of such rejection, no useful purpose would be served if the matter is again remanded. Further, the learned Judge while quashing the impugned order has given a consequential direction to issue the essentiality certificate on perusal of the various materials such as inspection reports submitted on number of occasions, several orders passed in earlier proceedings and all other factual details available on record.

13. Therefore, we are of the opinion that the order of the learned Judge does not call for interference. It is needless to point out that the issuance of essentiality certificate will not entitle the petitioner to commence the course unless the petitioner satisfies the other requirements and permission/approval to be granted by other authorities such as Medical Council of India, Central Government, University etc.

14. For the reasons stated above, the appeal is dismissed. Considering the fact that the time granted by the learned Judge has already expired and the contempt petition is pending before the learned Judge, a time of four weeks is granted to comply with the order of the learned Judge. No costs. Consequently, connected WAMP is also dismissed.

Index : Yes
Internet: Yes

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Copy to

1.The Secretary to Government,
State Government of Tamilnadu,
Health and Family Welfare Department,
Fort St. George,
Chennai-600 009.

2.The Director of Medical Education,
Kilpauk, Chennai-10.